

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket Nos. 36301 & 36302

STATE OF IDAHO,)	2009 Unpublished Opinion No. 678
)	
Plaintiff-Respondent,)	Filed: November 16, 2009
)	
v.)	Stephen W. Kenyon, Clerk
)	
ANDREW PHILLIP KNEFEL,)	THIS IS AN UNPUBLISHED
)	OPINION AND SHALL NOT
Defendant-Appellant.)	BE CITED AS AUTHORITY
)	

Appeal from the District Court of the Fifth Judicial District, State of Idaho, Twin Falls County. Hon. G. Richard Bevan, District Judge.

Orders revoking probation and requiring execution of concurrent unified five-year sentences, with three-year determinate terms, for possession of a controlled substance, affirmed; orders denying I.C.R. 35 motions for reduction of sentences, affirmed.

Dennis A. Benjamin of Nevin, Benjamin, McKay & Bartlett, LLP, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

Before LANSING, Chief Judge; GUTIERREZ, Judge;
and MELANSON, Judge

PER CURIAM

In Docket No. 36301, Andrew Phillip Knefel pled guilty to possession of a controlled substance. I.C. § 37-2732(c)(1), 37-2707(d). In exchange for his guilty plea, an additional count was dismissed. The district court imposed a unified sentence of five years, with a minimum period of confinement of three years. The district court suspended the sentence and placed Knefel on probation. Knefel thereafter violated his probation, which the district court reinstated.

Knefel pled guilty to a new charge of possession of a controlled substance in Docket No. 36302. The district court imposed a unified sentence of five years, with a minimum period of confinement of three years, to run concurrent with Knefel's other sentence. The district court

also revoked Knefel's probation in Docket No. 36301. However, the district court retained jurisdiction in both cases and thereafter again placed Knefel on probation. Subsequently, Knefel admitted to violating the terms of the probation, and the district court consequently revoked probation and ordered execution of the original sentences. Knefel filed I.C.R. 35 motions for reduction of his sentences, which the district court denied. Knefel appeals, contending that the district court abused its discretion in revoking probation, that the sentences are excessive, and that the district court erred in denying his Rule 35 motions.

It is within the trial court's discretion to revoke probation if any of the terms and conditions of the probation have been violated. I.C. §§ 19-2603, 20-222; *State v. Beckett*, 122 Idaho 324, 325, 834 P.2d 326, 327 (Ct. App. 1992); *State v. Adams*, 115 Idaho 1053, 1054, 772 P.2d 260, 261 (Ct. App. 1989); *State v. Hass*, 114 Idaho 554, 558, 758 P.2d 713, 717 (Ct. App. 1988). In determining whether to revoke probation a court must examine whether the probation is achieving the goal of rehabilitation and consistent with the protection of society. *State v. Upton*, 127 Idaho 274, 275, 899 P.2d 984, 985 (Ct. App. 1995); *Beckett*, 122 Idaho at 325, 834 P.2d at 327; *Hass*, 114 Idaho at 558, 758 P.2d at 717. The court may, after a probation violation has been established, order that the suspended sentence be executed or, in the alternative, the court is authorized under Idaho Criminal Rule 35 to reduce the sentence. *Beckett*, 122 Idaho at 326, 834 P.2d at 328; *State v. Marks*, 116 Idaho 976, 977, 783 P.2d 315, 316 (Ct. App. 1989). A decision to revoke probation will be disturbed on appeal only upon a showing that the trial court abused its discretion. *Beckett*, 122 Idaho at 326, 834 P.2d at 328.

Sentencing is also a matter for the trial court's discretion. Both our standard of review and the factors to be considered in evaluating the reasonableness of a sentence are well established and need not be repeated here. *See State v. Hernandez*, 121 Idaho 114, 117-18, 822 P.2d 1011, 1014-15 (Ct. App. 1991); *State v. Lopez*, 106 Idaho 447, 449-51, 680 P.2d 869, 871-73 (Ct. App. 1984); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982). When reviewing the length of a sentence, we consider the defendant's entire sentence. *State v. Oliver*, 144 Idaho 722, 726, 170 P.3d 387, 391 (2007).

When we review a sentence that is ordered into execution following a period of probation, we do not base our review solely upon the facts existing when the sentence was imposed. *State v. Whittle*, 145 Idaho 49, 52, 175 P.3d 211, 214 (Ct. App. 2007). Rather we also examine all the circumstances bearing upon the decision to revoke probation and require

execution of the sentence, including events that occurred between the original pronouncement of the sentence and the revocation of probation. *Id.*

Knefel asserts that the district court erred in denying his Rule 35 motions. A motion for reduction of sentence under I.C.R. 35 is essentially a plea for leniency, addressed to the sound discretion of the court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 203, 159 P.3d 838, 840 (2007). In conducting our review of the grant or denial of a Rule 35 motion, we consider the entire record and apply the same criteria used for determining the reasonableness of the original sentence. *State v. Forde*, 113 Idaho 21, 22, 740 P.2d 63, 64 (Ct. App. 1987); *Lopez*, 106 Idaho at 449-51, 680 P.2d at 871-73.

Applying the foregoing standards, and having reviewed the record in this case, we cannot say that the district court abused its discretion either in revoking probation, in ordering execution of Knefel's original sentences, or in denying his Rule 35 motions. Therefore, the orders revoking probation and directing execution of Knefel's previously suspended sentences and the denial of his Rule 35 motions are affirmed.